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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,923	08/18/2003	Robert W. Fox	036407.0002	3647

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EXAMINER

GROSSO, HARRY A

ART UNIT PAPER NUMBER

3727

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary****Application No.**

10/642,923

**Applicant(s)**

FOX ET AL.

**Examiner**

Harry A. Grosso

**Art Unit**

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) 6,9,20 and 28-41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 8, 10-19 and 21-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

***Election/Restrictions***

1. Applicant's election of Group I, claims 1-27, and species shown in Figures 22-51 in the reply filed on September 8, 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 6, 9, and 20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention or species, there being no allowable generic or linking claim. Applicant identified claim 9 as being drawn to the nonelected species. The examiner deems claims 6 and 20 to be drawn to the nonelected species because they recite a flexible membrane releasably bonded to the closure frame. This is plainly an element of the nonelected species as reflected in paragraphs 82, 88 and 89 of the specification and the Figure descriptions.
3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the opposing, pre-scored cuts, offset, pre-scored cuts and aligned pre-scored cuts in the cover panel (claims 16, 18 and 27) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure

is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 7, 8, 10 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Kobayashi et al (Kobayashi) (6,145,689).

6. Regarding claims 1-3 and 7, Kobayashi discloses a container (11, Figures 4-6) with sides and an upper edge and a closure (5, Figures 3-4 and column 5 lines 26-65) with a frame (5b), a removable cover panel (5a). The removable panel is made of thermoplastic, polymeric material (1, 6 and column 5, lines 1-25 and 28). The closure frame (5b) has downwardly extending legs that facilitate placement of the closure on the container. The closure is bonded to the container by heat sealing means (column 6,

lines 23-25). Kobayashi does not disclose the container bottom but the container is a tightly closed container for storage of food and beverage and a bottom would be inherent to this function (columns 1, lines 22-25).

7. Regarding claims 8, 10 and 15, Kobayashi discloses a ring tab (8, Figures 2-3 and column 5, lines 56-60) as a gripping means to remove the cover panel and a score cut (7, Figures 2-3 and column 5, lines 42-43) as means for removing the cover panel.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi in view of Brifcani et al (6,065,634). Kobayashi discloses the container of claim 1 having an upwardly extending peripheral rim (5b, Figure 4a) but does not teach stacking of the containers. Brifcani et al discloses the use of the upwardly extending peripheral rim in conjunction with the bottom profile to allow stacking of containers (Figure 9 and column 8, lines 24-30). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of the upwardly extending peripheral rim in conjunction with the bottom profile to allow stacking of containers as disclosed by Brifcani et al in the container disclosed by Kobayashi to allow stacking of the containers for storage convenience and better storage space utilization.

10. Claims 11-14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi in view of Dubois et al (Dubois) (4,201,306) and Guglielmo (3,620,875).

11. Regarding claims 11-14, Kobayashi discloses the container of claim one but does not teach the use of an electromagnetic, polymeric fusible material or the application of an electromagnetic field to bond the closure to the container. Dubois discloses the use of a ring of electromagnetic, polymeric, fusible material (26, 26a, Figures 4 and 6, and column 3, lines 20-37) and use of non-contact fixtures (28, 30, Figure 6 and column 3, lines 38-43) for application of induction (electromagnetic) heating principles as disclosed by Guglielmo (column 2 line 41 to column 3 line 12) to attach closures to a container in a process that is clean, rapid and reliable without destructive heating in surrounding plastic materials. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a ring of electromagnetic, polymeric, fusible material and use of non-contact fixtures for application of induction (electromagnetic) heating principles as disclosed by Dubois and Guglielmo in the container disclosed by Kobayashi to attach a closure to a container in a process that is clean, rapid and reliable without destructive heating in surrounding plastic materials.

12. Regarding claim 17, Kobayashi discloses the container (11) having sides, an upper edge, a closure with a frame having extending legs and a removable cover panel as discussed in paragraphs 6 and 9 above but does not disclose a fusion ring for bonding the closure to the container by the use of non-contact application of an electromagnetic field. Dubois and Guglielmo disclose the use of a ring of

electromagnetic, polymeric, fusible material and non-contact fixtures for application of an electromagnetic field to bond the closure to the container as discussed in paragraph 11 above.

13. Claims 19 and 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi in view of Dubois et al (Dubois) (4,201,306) and Guglielmo (3,620,875).

14. All of the elements of the container, the closure and the bonding of the closure to the container are disclosed by Kobayashi, Dubois et al and Guglielmo as discussed in paragraphs 6, 7 and 11 above, however, Kobayashi does not teach a container with a lower edge. Dubois et al discloses a container (12, Figure 2) with sides and upper and lower edges to allow the use of an extruded tube and pre-formed parts to produce a container that is more uniform and less expensive and time consuming to produce than a blow molded container (column 1, lines 46-62). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a container with sides and upper and lower edges as disclosed by Dubois in the container disclosed by Kobayashi to allow the use of an extruded tube and pre-formed parts to produce a container that is more uniform and less expensive and time consuming to produce than a blow molded container.

15. Claims 16, 18 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi in view of McHenry et al (5,770,290). Kobayashi discloses the closure with a removable panel and a score cut for removing the panel as discussed in paragraph 7 above but Kobayashi does not teach the use of opposing, pre-scored cuts; offset, pre-scored cuts or aligned pre-scored cuts in the cover panel. McHenry et al

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discloses the use of opposed, offset score cuts (10, 11 in Figure 3b) on first and second surfaces of the end panel which causes the end to open easily and cleanly (column 5, lines 21-24). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of opposed, offset score cuts on first and second surfaces of the end panel as disclosed by McHenry et al in the container disclosed by Kobayashi to allow the end to open easily and cleanly.

### ***Conclusion***

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hsu (6,427,862), Kawakami et al (4,828,135) and Godar (3,912,154) disclose containers with bonded closures and/or removable center panels. Holk (3,696,961) discloses aligned score cuts, and Guglielmo (3,620,876) discloses electromagnetic bonding.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday and alternate Fridays from 7am to 4 pm.

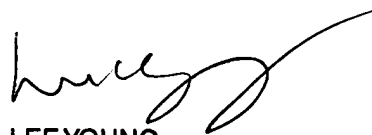
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on 571-272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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